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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd May 2008

No.5257-1i/1(B)-64/2004/LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 9th April, 2008 in Industrial Disputes Case No.1/2005 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s Samrat Cinema, Cuttack and their workman represented through Cuttack Commercial Workers Union, Cuttack was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1/2005

The 9th April, 2008

Present : Shri Srikanta Nayak, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: The Management of
M/s Samrat Cinema, Cuttack. .. First-Party—Management
And

Their workmen represented
through Cuttack Commercial Workers
Union, Cuttack. .. Second-Party—Workmen

Appearances : Shri N.K. Mishra and Associates, .. For the First-Party—Management Advocates.
 Shri S. Mishra and Associates, .. For the Second-Party—Workman Advocates.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes for adjudication vide their Order No. 2352-li-1(B)-64/2004//LE., dated the 4th March, 2005 :—

1. “Whether the action of the Management of M/s. Samrat Cinema, Madhupatna, Cuttack is not re-employing the retrenched workers of the erstwhile M/s. Samrat Cinema is legal and/or justified ? If not, to what relief the retrench worker are entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workmen’) is that they were working with the Management since 1980. The Management was managing the Samrat Cinema Hall. The Management closed the Cinema Hall asserting that closure notice was given on 15th February 1993 but actually there was no closure of the Cinema Hall. In order to harass the workmen the Management declared the closure. So, a dispute was raised and the Mercantile Workers Union taking advantage of the ignorance of the concerned workmen entered into a tripartite settlement and forced the workmen to accept the closure. The Management is still running the Cinema Hall by employing new persons. The Management has taken a false plea that the Cinema Hall was leased out to M/s. Galaxy Arts. As they are not re-employed, they raised a dispute. The Government having refused to refer the matter for adjudication, they filed a writ before the Hon’ble Court and as per the direction of the Hon’ble Court, the present reference was made to this Tribunal for adjudication.

3. The case of the first party (hereinafter referred to as the 'Management') is that the Management was not in a position to run the Cinema Hall for which it issued a notice for closure and in a tripartite settlement the closure was accepted and consequently the workmen received the closure compensation. Closure being different from retrenchment, the workmen are not entitled to any compensation. The Cinema Hall has been leased-out to M/s. Galaxy Arts, who is now running the Cinema Hall. The workmen are not entitled to any relief as there is no employer-employee relationship between them after they accepted the closure and the reference is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues have been framed:—

ISSUES

- (1) Whether the reference is maintainable ?
- (2) Whether the action of the Management of M/s. Samrat Cinema, Madhupatna, Cuttack is not re-employing the retrenched workers of the erstwhile M/s. Samrat Cinema is legal and/or justified ?
- (3) If not, to what relief the retrenched workers are entitled ?

5. The workmen examined two witnesses and the Management examined one witness in support of their respective case.

6. *Issue No.2*—The fact which is no more in dispute is that the workmen were employed by the Management. W.W. No.1 deposed that on 20th January, 1980 he joined with the Management along with other workers. On 15th February 1993 the Management issued a notice informing that the Cinema Hall will be closed on 3rd March, 1993 as the taxes were enhanced. So, they raised a dispute on 11th May, 1993 through the Mercantile Workers Union. A settlement was entered into on 25th May, 1993 and they were paid the compensation but the same was not paid as per law. Three to four days after the

settlement the Management started running of the Cinema Hall but refused to employ them. Ext. 1 is the notice and Ext.2 is the settlement.

W.W. No.2 deposed that the Management is running the Cinema Hall and is publishing advertisements and Exts.8 to 11 are the publications made in different newspapers.

On the other hand, M.W. No.1 deposed that the Cinema Hall was closed on 3rd March, 1993 and as per the tripartite settlement compensation was paid to the workman, which they received. Thereafter the Cinema Hall was leased-out to M/s. Galaxy Arts, who is running the same. He admitted in cross-examination that he is the owner of the Samrat Cinema Hall and there is no document to show that the Galaxy Arts has taken over the Cinema Hall.

7. The evidence of M.W. No.1 and W.W. No.1 and Ext. A, the copy of closure notice reveal that the Management issued the notice for closure and on 3rd March, 1993 the Cinema Hall was closed. A dispute was raised by the Union and Ext. D reveals that notice for conciliation was issued to the parties. Ext.2 (which is also marked as Ext. F for the Management) reveals that a tripartite settlement was arrived at between the parties and Ext. H series reveal that all the workmen have received the compensation. The evidence on record reveals that there was a valid settlement between the Management and the workmen and as per the settlement the workmen received the compensation. In the decision reported in 2005 (105) F.L.R. (Bombay) page-842 (Maharashtra General Kamgar Union Vrs. PIX Transmission Ltd.) their Lordships held that "Settlement arrived during the course of conciliation proceeding under sub-section (3) of the said Section 18, then the same shall be binding on all the parties i.e., all the workmen whether they are party to the said settlement or not." In the decision reported in 2006 (110) FLR (S.C.) Page-15 (Transmission Corporation, A.P. Ltd. Vrs. P. Rama Chandra Rao), their

Lordships held that “if the settlement had been arrived at by a vast majority of concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference made under the Act merely because a small number of workers were not parties to it or refused to accept it.”

In the case in hand, as already discussed, Ext. H series reveal that the workmen have already received the compensation as per the terms of the settlement which means that they had accepted the terms of settlement. So, the settlement is binding on them.

8. It is not disputed that after the closure the workmen were paid compensation by the Management. In the decision reported in 2005 (104) FLR (S.C.) page-820 (Maruti Udyog Ltd. Vrs. Ram Lal), their Lordships held that “ in a case of transfer or closure of the undertaking the workman concerned is entitled to receive compensation only. It does not postulate a situation where a workman despite having received the amount compensation would again have to be offered a job by a person reviving the industry.” The question of re-employment arises under section 25-H of the Act when the workman are retrenched but the said section has no application when the Unit was closed. Since admittedly the Unit was closed and the workman received the compensation, they are not entitled to the relief’s claimed.

9. *Issue Nos. 1 and 3*—As already stated, this is a case of closure. So, there is no relationship of employer and employee after the closure of the Unit and payment of compensation. So, the reference is outside the scope of the Industrial Disputes Act. In the decision reported in 2005 (105) FLR (Allahabad) page-329 (Glass Workers Mazdoor Sangha Vrs. Presiding Officer, Industrial Tribunal, Agra), their Lordships held that “closure being bonafide and real, reference fell outside the purview of the Industrial Disputes Act

and could not have been referred. No relief could have been granted to the worker in a dead industry.”

In this case also, the Unit of the Management closed and the workmen have received the compensation. So, the reference is not maintainable and the workmen are not entitled to any relief.

The reference is answered accordingly.

Dictated and Corrected by me

Srikanta Nayak
dt. 09-04-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Srikanta Nayak
dt. 09-04-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor
P. MALLICK
Under-Secretary to Government